

for the changes in their procedures that will be required to ensure a smooth transition to the new transaction processing sequence. Furthermore, SPEED Release 5.6 also includes an auto-retry facility that automatically will recycle transactions that fail to complete due to credit deficiencies. Under the auto-retry facility, transactions will be resubmitted for the delivery process at set intervals throughout the day. If it is determined that both the deliverer and receiver pass the credit checks, the item then will be processed and debits and credits will be posted to the appropriate accounts.

#### 9. Proposed Changes to PTC's Rules Implementing the Systems Modifications

The proposed amendments to PTC's rules delete references throughout the rules to the abeyance account and to the use of a receipt mode as a condition to completion of an account transfer. PTC also will make corresponding changes to its Participant Operating Guide that are consistent with the systems changes of SPEED Release 5.6 and the proposed rule amendments.

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>13</sup> and the rules and regulations thereunder because it facilitates the prompt and accurate clearance and settlement of securities transactions and provides for the safeguarding of securities and funds in PTC's custody or control or for which PTC is responsible.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

PTC does not believe that the proposed rule change will impose any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

PTC developed the SPEED Release 5.6 systems modifications in consultation with its participants and solicited their comments by Administrative Bulletins dated July 28, 1994; October 28, 1994; and March 20, 1995. PTC also solicited participant responses to the proposal informally and at meetings of PTC's Operations Committee of which participant representatives are members.

Participant comments on the proposed rule change expressed two main concerns with the original proposal. One concern was from participants that use the match functionality. These participants were

concerned that the immediate debit to the cash balance of a receiving participant's account for deliveries not yet approved by the receiving participant would adversely affect the participant's NFE or NDML. The second concern was a need to include an auto-retry facility for any such transactions that fail to complete because of credit deficiencies. The first concern did not result in any change to the original proposal because the requirement for the simultaneous debiting and crediting of cash requires that the receiver's cash balance be debited even though the delivery has not been approved by the receiver. In response to the second concern of participants that there be an auto-retry mechanism, PTC has incorporated a facility into Release 5.6 that will automatically recycle transactions which fail to complete because of credit deficiencies.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal

office of PTC. All submissions should refer to file number SR-PTC-95-06 and should be submitted by November 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 95-26429 Filed 10-24-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21428; File No. 812-9626]

#### **Annuity Investors Life Insurance Company, et al.**

October 19, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** Annuity Investors Life Insurance Company (the "Company"), Annuity Investors Variable Account A ("Separate Account"), and AAG Securities, Inc. ("AAG Securities").

**RELVEANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 22(d), 26(a)(2)(C) and 27(c)(2) thereof.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the Company: (1) To deduct a mortality and expense risk charge under certain variable annuity contracts ("Contracts"), and other variable annuity contracts issued by the Company in the future that are materially similar to the Contracts ("Future Contracts"), from the assets of the Separate Account or any separate account established in the future by the Company to support Future Contracts, and (2) to waive the contingent deferred sales charge when certain specified contingencies trigger the right to a complete or partial surrender.

**FILING DATE:** The application was filed on June 9, 1995, and amended and restated on October 10, 1995.

Applicants represent that an amendment to the application will be filed during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on November 13, 1995, and should be accompanied

<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

<sup>14</sup> 17 CFR 200.30-3(a)(12) (1994).

by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, P.O. Box 5423, Cincinnati, Ohio 45201-5423, Attn: Mark F. Muething, Esq.

**FOR FURTHER INFORMATION CONTACT:** Joseph G. Mari, Senior Special Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

#### Applicants' Representations

1. The Company is an Ohio stock life insurance company, and is a wholly-owned subsidiary of American Annuity Group, Inc. ("AAG").

2. On May 26, 1995, the Company established the Separate Account under Ohio law as an insurance company separate account. The Separate Account, registered under the 1940 Act as a unit investment trust, is divided into sub-accounts, each of which invests in shares of a different registered investment company or portfolio thereof.

3. The Company may established one or more separate accounts in the future ("Other Accounts") to support Future Contracts.

4. AAG Securities, a wholly-owned subsidiary of AAG, is registered as a broker-dealer under the Securities Exchange Act of 1934. AAG Securities will be the principal underwriter of the Contracts, which will be sold by licensed insurance agents who are registered representatives of AAG Securities or of a registered broker-dealer that has entered into a selling agreement with AAG Securities.

5. The Contracts are group flexible combination variable and fixed annuity contracts. The amount and timing of contributions (after the deduction of premium tax, if any) made to the Company in consideration for a person's ("Participant") participation under a Contract ("Purchase Payments") under a certificate of participation ("Certificate") are determined by the applicable Participant.

6. The Contracts provide for five options which may be elected by the

Participant for the payment of annuity payments by the Company: (1) A life annuity with payments for at least a fixed period; (2) a life annuity; (3) a joint and one-half survivor annuity; (4) an income for a fixed period; and (5) such other form of annuity that is acceptable to the Company.

7. The Company deducts annually from the value of a Participant's interest in all sub-accounts a charge of \$25 as partial compensation for expenses relating to the issue and maintenance of the Certificate and the Separate Account ("Certificate Maintenance Fee"). The Company reserves the right to increase the Certificate Maintenance Fee and guarantees that the Certificate Maintenance Fee will not exceed \$40. Any increase in the Certificate Maintenance Fee will apply only to deductions after the effective date of the charge.

8. The Company currently imposes no charge to reimburse itself for expenses incurred in the administration of the Contract, the Certificates and the Separate Account ("Administration Charge"), but reserves the right to impose an Administration Charge at the end of each valuation period. This charge would be deducted from the net asset value of each sub-account of the Separate Account at an effective annual rate guaranteed not to exceed .20%. Applicants represent that the Certificate Maintenance Fee and any future Administration Charge will be deducted in reliance on, and in compliance with, Rule 26a-1 under the 1940 Act.

9. No front-end sales charge is deducted from Purchase Payments. The Company may deduct a contingent deferred sales charge ("CDSC") of up to 7% of Purchase Payments on certain surrenders or partial surrenders to help defray the costs incurred by the Company in connection with the sale of the Contracts. The CDSC will be imposed on surrenders of Purchase Payments only in cases where the purchase payment was made within seven years of the date of a written request for surrender. Surrenders and partial surrenders will be applied first to accumulated earnings (which may be surrendered without charge), and then to Purchase Payments on a first-in, first-out basis. The following table shows the schedule of the CDSC that will be applied to withdrawal of a purchase payment:

Number of full contract years since purchase payment	Applicable charge (percent)
0 .....	7
1 .....	6
2 .....	5

Number of full contract years since purchase payment	Applicable charge (percent)
3 .....	4
4 .....	3
5 .....	2
6 .....	1
7 .....	0

10. The Company may reduce or eliminate the CDSC on the Contracts and Certificates when certain sales result in savings or reduced sales expenses. The entitlement to such a reduction in the CDSC generally will be based on: (i) The size and type of the group to which sales are to be made; (ii) the anticipated total amount of Purchase payments to be received; and/or (iii) any prior or existing relationship with the Company. Applicants represent that the reduction or elimination of the CDSC will not be unfairly discriminatory to any purchaser.

11. The Contracts provide that the following types of surrenders or partial surrenders may be made without incurring a CDSC:

a. *Seven Year Old Purchase Payments.* Surrenders of all or part of any Purchase Payments that have been held by the Company for at least seven years.

b. *10% Free Withdrawals.* During any period of twelve months commencing on the effective date of the Certificate and on each Certificate Anniversary (the annual anniversary of the effective date of the Certificate) thereafter ("Certificate Year"), after the first Certificate Year, for Certificates qualified under Section 403(b) of the Internal Revenue Code of 1986, as amended ("Code"), the CDSC will not be imposed on the surrender of up to 10% of the Account Value (i.e., the aggregate value of a Participant's interest in the Variable Account plus the Fixed Account) as of the last day of the previous Certificate Year.

c. *Purchase of an Income Annuity.* If all or part of the Account Value is applied to the purchase of an annuity from the Company for life or for a non-commutable period of five years or more.

d. *Disability.* The surrender of a Certificate if the Participant is "disabled" as that term is defined in the Social Security Act of 1935, as amended.

e. *Plans Qualified Under Section 403(b) of the Code.* For Participants in plans qualified under Section 403(b) of the Code if: (i) The plan is subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Participant incurs a separation from service; or (ii) the plan is not subject to ERISA and either (A) the Participant

incurs a separation from service, has attained age 55 and has held the Certificate for at least seven years, provided that the Account Value is not transferred on a tax-free basis to another insurance carrier, or (B) the Participant has held the Certificate for fifteen years or more.

f. *Plans Qualified Under Section 401 of the Code.* For Participants in plans qualified under Section 401 of the Code if the Participant incurs a separation from service.

g. *Long-term Care Rider.* If the Participant is confined in a "licensed hospital" or "long-term care facility" (as those terms are defined in the Long-Term Rider to the Contract) for at least 90 days beginning on or after the first Certificate Anniversary.

12. The Company will deduct a mortality and expense risk charge under certain Contracts that is equal, on an annual basis, to 1.25% of the daily net asset value of each sub-account in the Separate Account. Approximately 0.75% of this charge is attributable to mortality risks and 0.50% is attributable to expense risks. The Company guarantees that this charge of 1.25% will never increase for such Contracts.

13. The Company proposes to offer an Enhanced Contract with a reduced mortality and expense risk charge to employers and/or their employee benefit trusts where the Company is the preferred variable annuity provider to that organization. In this situation, the Company expects significant administrative expense savings for Enhanced Contracts from the consolidation of enrollment, premium transmission and Participant servicing functions. The Company also anticipates that the additional administrative support typically provided by employers/trustees in this situation will reduce renewal expenses and improve Contract and Certificate persistency, thereby resulting in administrative expense savings to the Company.

14. The Company proposes to deduct from the Enhanced Contract a mortality and expense risk charge that is equal, on an annual basis, to 0.95%. Approximately 0.20% of this charge is attributable to expense risk and 0.75% is attributable to mortality risk. The Company guarantees that this charge of 0.95% will never be increased for Enhanced Contracts.

15. The mortality risks assumed by the Company arise in part from the Company's guarantee that it is obligated to make annuity payments at least equal to payments calculated based on annuity tables provided in the Contracts and Certificates, regardless of how long

a Participant or annuitant lives, and regardless of any general improvement in life expectancy.

16. The Company also assumes a mortality risk in connection with the provision of a death benefit. If the Participant dies before attaining age 75, and before the annuity commencement date, the death benefit will be an amount equal to the greatest of: (i) The Account Value on the Death Benefit Valuation Date (*i.e.*, the valuation period during which the Company receives both proof of death of the Participant and a written request regarding payment of the death benefit), less any applicable premium tax not previously deducted, and less any outstanding loans; (ii) the total Purchase Payments, less any applicable premium tax not previously deducted, less any partial surrenders, and less any outstanding loans; or (iii) the largest death benefit amount on any Certificate Anniversary prior to death that is an exact multiple of five and occurs prior to the Death Benefit Valuation Date, less any applicable premium tax not previously deducted, less any partial surrenders after the death benefit was determined and less any outstanding loans.

If the Participant dies after attaining age 75 and before the annuity commencement date, the death benefit is an amount equal to the greatest of: (i) The Account Value on the Death Benefit Valuation Date, less any applicable premium tax not previously deducted, and less any outstanding loans; (ii) the total Purchase Payments, less any applicable premium tax not previously deducted, less any partial surrenders, and less any outstanding loans; or (iii) the largest death benefit amount on any Certificate Anniversary prior to death that is both an exact multiple of five and occurs prior to the date on which the participant attained age 75, less any applicable premium tax not previously deducted, less any partial surrenders after the death benefit was determined and less any outstanding loans.

17. The expense risk assumed by the Company is the risk that the Company's administrative charges will be insufficient to cover actual administrative expenses over the life of the Contracts.

#### Applicants' Legal Analysis and Conditions

Pursuant to Section 6(c) of the 1940 Act, the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the

1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

#### A. Exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants request an order under Section 6(c) exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Separate Account or any Other Account under the Contracts and the Future Contracts.

3. Applicants submit that their request for an order that applies to the Separate Account and to Other Accounts issuing Future Contracts is appropriate in the public interest. Such an order would reduce administrative costs and increase the Company's ability to respond promptly to new opportunities that may be presented. Applicants assert that without the requested relief, the Company would have to request and obtain exemptive relief for each new Other Account it establishes to fund Future Contracts. Investors would not receive any additional benefit or additional protection by the Company being required repeatedly to seek exemptive relief with respect to the issues addressed in this application. Applicants represent that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Applicants assert that the grant of this exemptive relief would not diminish the protections provided to investors by the 1940 Act.

4. Applicants represent that the mortality and expense risk charges under the Contracts (1.25% or .95%, as applicable) are reasonable in relation to the risks undertaken by the Company and are within the range of industry

practice for comparable annuity products. Applicants base this representation on an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as any contractual right to increase charges above current levels, the existence and amount of other charges, the nature of the death benefit provided, the guaranteed annuity purchase amounts, the number of transfers permitted without charge and surrenders not subject to a CDSC. The Company represents that it will maintain at its administrative office a memorandum available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made by Contracts and Enhanced Contracts.

5. Similarly, Applicants represent that the mortality and expense risk charges under any Future Contracts issued by the Separate Account or Other Separate Accounts, will be reasonable in relation to the risks assumed by the Company and within the range of industry practice for comparable annuity products. The Company undertakes to maintain at its administrative office a separate memorandum, available to the Commission upon request, setting forth in detail the products analyzed, and the methodology and the results of the analysis relied upon in making these determinations.

6. Applicants acknowledge that the Company's revenues from the CDSC could be less than the Company's costs of distributing the Contracts. In that case, the excess distribution costs would have to be paid out of the Company's general account, including the profits, if any, from the mortality and expense risk charges. In those circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to the distribution of the Contracts. The Company represents that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts and Future Contracts will benefit the Separate Account and Other Accounts and the Participants. The basis for that conclusion is, and with respect to Future Contracts will be, set forth in a memorandum which will be maintained by the Company at its administrative office and will be available to the Commission.

7. The Company represents that the Separate Account and Other Accounts will invest only in an underlying mutual fund which undertakes, if it adopts a plan to finance distribution

expenses under Rule 12b-1 under the 1940 Act, to have a board of directors, a majority of whom are not "interested persons" of that fund within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

#### *B. Exemption From Section 22(d) of the 1940 Act*

1. Pursuant to Section 6(c) of the 1940 Act, Applicants also request that the Commission issue an order to provide exemptive relief from Section 22(d) to the extent necessary to permit the Applicants to waive the CDSC under the Contracts and Future Contracts in the event of the enumerated contingencies triggering the right to make the free withdrawals as described above.

2. Section 22(d) of the 1940 Act prohibits a registered investment company, its principal underwriter, or a dealer in its securities, from selling any redeemable security issued by such registered investment company to any person except at a public offering price described in the prospectus. Rule 6c-8 under the 1940 Act permits registered separate accounts to impose a deferred sales charge. Although Rule 6c-8, unlike Rule 6c-10 under the 1940 Act, does not impose any conditions on the ability of the investment company involved to provide for variations in the deferred sales charges, Rule 6c-8 (again unlike Rule 6c-10) does not provide an exemption from Section 22(d). Applicants recognize that the proposed waiver of the CDSC described in this application could be viewed as causing the Contracts to be sold at other than a uniform offering price.

3. Rule 22d-1 permits the sale of redeemable securities at prices that reflect scheduled variations in, or elimination of, sales loads. That Rule has been interpreted as granting relief only for scheduled variations in front-end sales loads, not deferred sales loads and, therefore, is not directly applicable to Applicants' proposed waiver of the CDSC.

4. Rule 22d-2 exempts registered separate accounts through which variable annuity contracts are offered, their principal underwriters, dealers and sponsoring insurance companies from Section 22(d) to the extent necessary to permit variations in the sales load, administrative charges, or other deductions from the Purchase Payments assessed under such contract, provided that those variations reflect differences in costs or services, are not unfairly discriminatory, and are described adequately in the prospectus. Applicants represent that the elimination or reduction of the CDSC

when sales of the Contracts and Certificates result in savings or reduction of sales expenses would be made in reliance on Rule 22d-2. Applicants also represent, however, that the seven proposed contingencies for waiver of the CDSC do not reflect differences in sales costs or services. For that reason, Applicants do not rely on Rule 22d-2 for the requested relief.

5. Applicants submit that the proposed waiver of the CDSC is consistent with the policies of Section 22(d) and the rules thereunder. One such purpose is to prevent an investment company from discriminating among investors by charging different prices to different investors. Applicants represent that, to the extent permitted by state law, the seven proposed contingencies relating to the waiver of the CDSC will be included in all Contracts and Certificates; eligibility for the waiver will be predicated upon the qualification of a Participant under one of the seven contingencies. Therefore, the benefit will not unfairly discriminate among Participants. Applicants submit that the waiver is advantageous to Participants because it provides circumstances in which they may make partial surrenders or a full surrender under their Contracts without imposition of the CDSC. Applicants represent that waiving the CDSC under such circumstances will not result in the occurrence of any of the abuses that Section 22(d) is designed to prevent.

#### **Conclusion**

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 22(d), 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 95-26432 Filed 10-24-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-21424/812-9806]

#### **Equitable Capital Partners, L.P., et al.; Notice of Application**

October 17, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").